

ANNUAL REPORT  
OF THE  
COMMISSION ON COURTS



Indiana Legislative Services Agency  
200 W. Washington Street, Suite 301  
Indianapolis, Indiana 46204

November, 2012

# INDIANA LEGISLATIVE COUNCIL

## 2012

Senator David Long

Vice-Chairperson

Fort Wayne

Speaker Brian Bosma

Chairperson

Indianapolis

Senator Vi Simpson

Bloomington

Representative Linda Lawson

Hammond

Senator Brandt Hershman

Buck Creek

Representative Kathy Richardson

Noblesville

Senator Patricia Miller

Indianapolis

Representative William Friend

Macy

Senator Brent Steele

Bedford

Representative Eric Turner

Cicero

Senator James Merritt

Indianapolis

Representative Timothy Brown

Crawfordsville

Senator James Arnold

LaPorte

Representative Vanessa Summers

Indianapolis

Senator Timothy Lanane

Anderson

John M. Ross  
Executive Director  
Legislative Services Agency

## **COMMISSION ON COURTS**

### **Membership Roster**

#### **Representatives**

Greg Steuerwald, Vice-Chairperson  
Avon

Kathy Richardson  
Noblesville

Ed DeLaney  
Indianapolis

Matt Pierce  
Bloomington

#### **Senators**

Brent Steele, Chairperson  
Bedford

Randall Head  
Logansport

Lonnie Randolph  
East Chicago

Timothy Lanane  
Anderson

### **LAYMEMBERS**

Thomas Felts  
Fort Wayne

Chief Justice Brent Dickson  
Indianapolis

Christa Coffey  
Lafayette

Commissioner Therese Brown  
Fort Wayne

Michael J. Kruk  
South Bend

### **Staff**

Timothy Tyler  
Attorney for the Committee

Mark Goodpaster  
Fiscal Analyst for the Committee

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/> .

## **I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES**

The Indiana General Assembly enacted IC 33-23-10 creating the Commission on Courts (Commission).

IC 33-23-10-7 charges the Commission with the following:

1. Review and report on all requests for new courts or changes in jurisdiction of existing courts.
2. Conduct research concerning requests for new courts or changes in jurisdiction of existing courts. The research may include conducting surveys sampling members of the bar, members of the judiciary, and local officials to determine needs and problems.
3. Conduct public hearings throughout Indiana concerning requests for new courts or changes in jurisdiction of existing courts. The Commission shall hold at least one public hearing on each request presented to the Commission.
4. Review, report on, and make recommendations concerning any other matters relating to court administration that the Commission determines appropriate, including the following:
  - a. Court fees.
  - b. Court personnel, except constables that have jurisdiction in a county that contains a consolidated city.
  - c. Salaries of court officers and personnel, except constables that have jurisdiction in a county that contains a consolidated city.
  - d. Jury selection.
  - e. Any other issues relating to the operation of the courts.
5. Submit a report in an electronic format under IC 5-14-6 before November 1 of each year to the General Assembly. The report must include the following:
  - a. A recommendation on all requests considered by the Commission during the preceding year for the creation of new courts or changes in the jurisdiction of existing courts.
  - b. If the Commission recommends the creation of new courts or changes in jurisdiction of existing courts, the following:
    - i. A draft of legislation implementing the changes.
    - ii. A fiscal analysis of the cost to the state and local governments of implementing recommended changes.
    - iii. Summaries of any research supporting the recommended changes.
    - iv. Summaries of public hearings held concerning the recommended changes.

The Legislative Council assigned the following additional responsibility to the Commission:

\*Study the creation of a centralized department of administrative law judges within the office of the Attorney General that considers the following (HEA 1273-2012):

- \*The experiences of Texas and other states that have implemented the "Texas Model" of administrative adjudication.
- \*The experiences of other states that have implemented similar models.
- \*The fiscal impact of implementing a centralized department of administrative law.
- \*The practicality and logistics of implementing a centralized department of administrative law judges.

## **II. INTRODUCTION AND REASONS FOR STUDY**

The legislative branch and the judicial branch are separate and co-equal branches of state government. The Commission on Courts was established to give the Indiana General Assembly adequate time to study legislative proposals that will affect the judicial branch.

## **III. SUMMARY OF WORK PROGRAM**

The Commission met two times during the 2012 interim to study court-related issues.

At the first meeting on September 5, 2012, the Commission heard testimony on or discussed the following topics:

- \*Request for a new magistrate in Hamilton County
- \*Request for two new magistrates in Hendricks County
- \*The creation of a survey to gather information concerning the administrative adjudication system in Indiana

At the second meeting on October 26, 2012, the Commission heard testimony on or discussed the following topics:

- \*Request for a second judge in Owen County
- \*Marion County court issues
- \*Preliminary survey results concerning the administrative adjudication system in Indiana

## **IV. SUMMARY OF TESTIMONY**

The Commission heard testimony concerning the following topics from the following witnesses:

## **Request for Two New Magistrates in Hendricks County**

Judge Robert Freese of the Hendricks Superior Court No.1, stated the following:

- \*Hendricks County had made this request for additional magistrates several times in the past.

- \*The request for two new magistrates was supported by the Hendricks County Superior Court judges, Hendricks County Council, and Hendricks County Board of Commissioners.

- \*Statistical analyses of weighted caseloads supported the growing need for additional judicial officers in Hendricks County.

## **Request for a New Magistrate in Hamilton County**

Orval Schierholz, the Administrator of Courts for Hamilton County, stated the following:

- \*The Commission has endorsed a new magistrate position for Hamilton County during each of the last two years, but funding issues had prevented legislation establishing the position from being enacted.

- \*The need for additional judicial officers in Hamilton County was still just as great if not greater.

- \*The request for a new magistrate was supported by the Hamilton County judges, the Board of Commissioners of Hamilton County, the Hamilton County Council, the Hamilton County Prosecuting Attorney, and the President of the Hamilton County Bar Association.

## **The Administrative Adjudication System in Indiana**

Karen Firestone, Fiscal Analyst from the Legislative Services Agency, presented a proposed survey to the Commission to be sent to over 300 state agencies to gather more information concerning the administrative adjudication system in Indiana. Ms. Firestone stated the following concerning the survey:

- \*The survey would acquire data concerning how administrative law judges and other hearing officers operate under the Administrative Orders and Adjudication Act (IC 4-21.5) and other statutes that apply to administrative adjudication in state government.

- \*The survey was divided into questions concerning the administrative adjudication process in general, questions concerning administrative law judges and other hearing officers, and questions concerning time spent and expenditures made related to administrative adjudication activities.

The Commission members unanimously approved sending the survey to all appropriate state government entities.

A PDF version of the preliminary results of the Administrative Law Survey may be found on the 2012 Commission website at the following:

<http://www.in.gov/legislative/interim/committee/crts.html>

Dennis Foreman from Indianapolis, Indiana, stated the following:

- \*Administrative law judges that are hired by plaintiffs lack objectivity and are reticent to rule against those plaintiffs.
- \*Administrative law judges should be appointed by a third party, should not be tied financially to any decisions they make, and should probably all be attorneys.
- \*Some administrative law judges often ignored case law in making decisions.

Judge Thomas Felts of the Allen Circuit Court submitted two memos prepared by his staff to Commission members concerning the following:

- \*The administrative adjudication systems in states surrounding Indiana.
- \*The "Texas Model" of centralizing administrative adjudication officers and hearings in a neutral and independent agency (The Texas State Office of Administrative Hearings).

### **Request for a Second Judge in Owen County**

Richard Lorenz, Owen County Attorney, stated the following:

- \*Owen County currently has only one court and one judge.
- \*The five counties surrounding Owen County currently have at least two judges even though the population of Owen County is only slightly less than many of these counties.
- \*Having only one judge in Owen County causes issues concerning the need to have a judicial officer available twenty-four hours a day to do such things as issue warrants on a timely basis and could lead to "speedy trial" problems and conflict of interest concerns.
- \*The Owen County Commission and Council seem ready to provide resources for a new court.

John Fuhs, Attorney from Spencer, Indiana, stated the following:

- \*Owen Circuit Court Judge Frank Nardi supports adding a second judge in Owen County.
- \*The Division of State Court Administration Weighted Caseload Report does not accurately reflect the need for judicial officers in Owen County.
- \*Several "reconditioning" projects are under way in the Owen County Courthouse.

## **Marion County Court Issues**

Judge David Certo of the Marion Superior Court stated the following:

\*Marion County currently has eight different types of judicial officers. The goal is to "regularize and professionalize" Marion County judicial officers by reducing the types of judicial officers to four and providing more training for these officers.

\*One idea to increase revenue to pay for salary increases for commissioners involved in the Marion County guardian ad litem program was to establish a \$35 fee to be paid by persons who receive traffic tickets and subsequently participate in a diversion program.

\*Improvements have been made to the Marion County Traffic Court including the relocation of the Court to a more adequate facility on the east side of Indianapolis and making changes to technology used by the Court to improve public access.

## **V. COMMITTEE RECOMMENDATIONS**

The Commission made the following recommendations:

1. The Commission recommended that legislation be enacted to allow the Hamilton Superior Court judges to jointly appoint a new magistrate. (Approved 8 to 0 by show of hands.)
2. The Commission recommended that legislation be enacted to allow the Hendricks Superior Court judges to jointly appoint two new magistrates. (Approved 8 to 0 by show of hands.)
3. The Commission recommended that legislation be enacted to add one new judge in Owen County as part of a unified circuit court with two judges beginning January 1, 2015. (Approved 8 to 0 by show of hands.)
4. The Commission recommended that its study of the administrative adjudication system in Indiana should be continued during the 2013 interim. (Approved 8-0 by voice vote.)



## WITNESS LIST

Judge David Certo, Marion Superior Court  
Karen Firestone, Fiscal Analyst, Legislative Services Agency  
Dennis Foreman, Indianapolis, Indiana  
Judge Robert Freese, Hendricks Superior Court No.1  
John Fuhs, Attorney, Spencer, Indiana  
Richard Lorenz, Owen County Attorney  
Orval Schierholz, Administrator of Courts, Hamilton County